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10/519,095	01/27/2006	Peter A. Fortman	06975-551US1	9000
26171	7590	04/12/2007	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			NGUYEN, QUANG N	
			ART UNIT	PAPER NUMBER
			2141	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/12/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/519,095	FORTMAN ET AL.	
	Examiner Quang N. Nguyen	Art Unit 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 March 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 and 13-57 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 and 13-57 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

***Detailed Action***

1. This Office Action is responsive to the Amendment filed on 03/09/2007. Claims 1-4, 7, 13-14, 17, 19-20, 22 and 25-26 have been amended. Claims 10-12 have been cancelled. Claims 27-57 have been added. Claims 1-9 and 13-57 are pending.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claim 25 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

4. As to claim 25, it appears that claim 25 would reasonably be interpreted by one of ordinary skill as a system of "software per se", failing to fall within a statutory category of invention. Applicant's disclosure contains no explicit and deliberate definition for the term "means", and in the context of the disclosure and claims in question, one of ordinary skill would reasonably interpret the "means" as software applications. As such, the system of "means" alone is not a machine, and it is clearly not a process, manufacture nor composition of matter. Thus, the claims are not limited to statutory subject matter and are therefore nonstatutory.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-9 and 13-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Selgas et al. (US 6,571,290), hereinafter “Selgas”.**

7. As to claim 1, **Selgas** teaches a computer-implemented method for modifying network configuration information on a client node, the method comprising:

establishing a network connection between a client node and a host node using at least one network configuration parameter (*after the client dispatch application 200 has determined the proper dial-in number, the user's modem is initialized and dialing occurs to connect the user 110 to the access service 106 via the predetermined ISP 102 using the selected dial-in number*) (**Selgas, Fig. 2 and col. 14, lines 38-42**);

accessing configuration history information describing parameters of a previous and no longer active network connection between the client node and the host node (*collecting and storing the network services information, i.e., configuration history information, in the network services database 206 on the user node 110a, 110b,*

wherein the network services database 206 contains access information for each dial-in number for a particular ISP such as one or more PAP IDs/passwords, default routing information and configuration information to configure the user's modem, such as data compression information and speed) (**Selgas, Fig. 2, col. 9, lines 39-62 and col. 17, lines 40-65**):

accessing policy information including a desired network connection performance rule (the access service 106 offers Internet access to the user 110 via a plurality of ISPs 102 based on the appropriate level of service requested by the user such as the "lowest cost service", the "highest reliability service", the "most reliable service", or combinations thereof, i.e., based on a desired network connection performance, stored in the network services database 206) (**Selgas, col. 8, lines 32-54, col. 10, lines 4-11 and col. 15, lines 22-34**):

using the configuration history information along with the policy information to determine whether at least one of the parameters of the previous and no longer active network connection fails to satisfy the desired network connection performance rule (based on the received header information including user ID, PAP ID, network services databases 206, etc., the access service 106 determines what, if any, updates are required to be made to the user client's dispatch application, databases, or network access devices operating system, i.e., identifying and providing the user 110 with information needed to access one or more desired ISPs 102 to achieve the appropriate level of service based on cost, location, availability, reliability, etc.) (**Selgas, col. 8, lines 32-54, col. 14, line 62 – col. 15, line 34 and col. 17, lines 40-65**); and

if it is determined that the at least one of the parameters of the previous and no longer active network connection fails to satisfy the desired network connection performance rule, modifying the at least one of the network configuration parameter used to establish the network connection between the client node and the host node (*if any updates are required to be made to the user client's dispatch application, databases, etc., the access service 106 will generate and transmit these updates to the user 110, i.e., identifying and providing the user 110 with information needed to access one or more desired ISPs 102 based on cost, location, availability, reliability, etc.*)

(Selgas, col. 8, lines 32-54, col. 17, lines 40-65 and col. 20, line 35-50)

8. As to claim 2, **Selgas** teaches the method of claim 1, wherein accessing the policy information includes receiving the policy information from the host node; and analyzing the policy information (*the access service 106 identifies and provides the user 110 with policy information including access information needed to access one or more desired ISPs 102 that meet the customer desired low cost operation, reliability operation, and/or availability operation*) (Selgas, col. 8, lines 32-54, col. 17, lines 40-65 and col. 20, line 35-50).

9. As to claim 3, **Selgas** teaches the method of claim 1, wherein:  
establishing the network connection includes establishing a modem connection using at least one modem configuration parameter (*after the client dispatch application 200 has determined the proper dial-in number, the user's modem is initialized and*

*dialing occurs to connect the user 110 to the access service 106 via the predetermined ISP 102 using the selected dial-in number) (Selgas, Fig. 2 and col. 14, lines 38-42);*

*modifying the at least one network configuration parameter includes modifying the at least one modem configuration parameter (the updated ISP-specific access information comprising information such as one or more PAP IDs/passwords, default routing information and configuration information to configure the user's modem such as dial-in number, data speed/compression information) (Selgas, col. 17, lines 40-65).*

10. As to claim 4, **Selgas** teaches the method of claim 1, further comprising:

*if it is determined that at least one of the parameters of the previous and no longer active network connection fails to satisfy the desired network connection performance rule, modifying a plurality of the network configuration parameters (if any updates are required to be made to the user client's dispatch application, databases, etc., the access service 106 will generate and transmit these updates to the user 110) (Selgas, col. 8, lines 32-54, col. 17, lines 40-65 and col. 20, line 35-50); and*

*establishing a second network connection between the client node and the host node using the modified plurality network configuration parameters (after receiving the updated ISP-specific access information, the client dispatch application 200 may disconnect the user 110 from the current ISP 102 and automatically dial and reconnect the user 110 to the desired ISP 102 associated with the ISP-specific access information, i.e., associated with the modified plurality network configuration parameter) (Selgas, col. 8, lines 9-13 and col. 20, lines 47-50).*

11. As to claim 5, **Selgas** teaches the method of claim 4, wherein the at least one modem configuration parameter includes a dialed number parameter and a connection speed parameter (*the updated ISP-specific access information comprising information such as one or more PAP IDs/passwords and configuration information to configure the user's modem, such as dial-in number, and speed*) (**Selgas**, col. 17, lines 40-65).
12. As to claim 6, **Selgas** teaches the method of claim 5, wherein the at least one modem configuration parameter further includes a data compression technique parameter and a modulation technique parameter (*the updated ISP-specific access information comprising information such as one or more PAP IDs/passwords, default routing information and configuration information to configure the user's modem, such as dial-in number, data speed/compression information*) (**Selgas**, col. 17, lines 40-65).
13. As to claim 7, **Selgas** teaches the method of claim 1, wherein:
  - establishing the network connection includes establishing an Internet connection between the client node and the host node using at least one Internet configuration parameter (*the user 110 connects to the Internet 100 via a predetermined ISP 102*) (**Selgas**, col. 6, lines 6-31); and
    - modifying the at least one network configuration parameter further includes modifying the at least one Internet configuration parameter to establish a second Internet connection (*the user 110 reconnects to the Internet 100 via a preferred/desired ISP 102*) (**Selgas**, col. 6, lines 6-31, col. 15, lines 1-19 and col. 17, lines 54-61).

14. As to claim 8, **Selgas** teaches the method of claim 7, wherein the at least one Internet configuration parameter includes a host Internet Protocol (IP) address parameter (*when the user contacts the ISP, the user is connected to the next available modem and the IP address of that modem becomes the IP address of that user for the remainder of that connection session*) and a connection speed parameter (*the updated ISP-specific access information comprising information such as configuration information to configure the user's modem, such as dial-in number, data compression information and speed*) (**Selgas, col. 6, lines 6-31 and col. 17, lines 40-65**).

15. As to claim 9, **Selgas** teaches the method of claim 8, wherein the at least one Internet configuration parameter further includes a data compression technique parameter and an encryption technique parameter (*various databases residing at the access provider and each of the clients systems permits dynamic or constantly changeable network access and encryption parameters to minimize the possibility of unauthorized access*) (**Selgas, col. 17, lines 40-65 and col. 29, lines 6-13**).

16. As to claim 13, **Selgas** teaches the method of claim 1, wherein the performance rule includes a rule for specifying performance criteria (*which ISP 102 and what locations (dial-in phone numbers for local access) have the highest reliable service, the most available server, etc., for a given user's dial-in location*) (**Selgas, col. 8, lines 32-54, col. 10, lines 4-11 and col. 21, line 4 – col. 22, line 64**).

17. As to claim 14, **Selgas** teaches the method of claim 1, wherein the policy information further includes host access information used by the client node when modifying the at least one network configuration parameter (*the access service 106 tracks and stores information relating to all ISPs 102 and dial-in numbers regarding past history connections so the reliability function may use any one of the types of availability information, or combination thereof, for determining the dial-in number that will provide the user with a high reliability connection*) (**Selgas, col. 21, lines 31-61**).

18. As to claim 15, **Selgas** teaches the method of claim 14, wherein the host access information includes at least one modem access number (*the updated ISP-specific access information comprising information such as configuration information to configure the user's modem, such as dial-in number, data compression information and speed*) (**Selgas, col. 6, lines 6-31 and col. 17, lines 40-65**).

19. As to claim 16, **Selgas** teaches the method of claim 14, wherein the host access information includes at least one Internet Protocol (IP) address (*when the user contacts the ISP, the user is connected to the next available modem and the IP address of that modem becomes the IP address of that user for the remainder of that connection session*) (**Selgas, col. 6, lines 6-31**).

20. As to claim 17, **Selgas** teaches the method of claim 1, further comprising terminating the network connection; and establishing a second network connection

based on the modified at least one network configuration (*after receiving the ISP-specific access information, the client dispatch application 200 may disconnect the user 110 from the current ISP 102 and automatically dial and reconnect the user 110 to the desired ISP 102 associated with the ISP-specific access information, i.e., associated with the modified network configuration parameter*) (**Selgas, col. 8, lines 9-13**).

21. As to claim 18, **Selgas** teaches the method of claim 1, further comprising sending the configuration history information to the host node (*the client dispatch application 200 dispatches a “pinger” message, to the access server 106, with header information including the database 206 that contains access information for each dial-in number for a particular ISP such as one or more PAP IDs/passwords, default routing information and configuration information to configure the user’s modem, such as data compression information and speed*) (**Selgas, col. 9, lines 39-62, col. 11, lines 50-59 and col. 17, lines 40-65**).

22. As to claim 19, **Selgas** teaches the method of claim 1, further comprising establishing a second network connection based on the modified at least one network parameter; and collecting additional configuration history information on the client node including at least one parameter that is related to the second network connection (*the Service Selected sub-function retrieves configuration information from the network services database 206 and sends this information in a data message to the access service 106*) (**Selgas, col. 20, lines 35-50**).

23. Claim 20 is a corresponding computer system claim of method claim 1; therefore, it is rejected under the same rationale.
24. As to claim 21, **Selgas** teaches the computer system of claim 20, further comprising an input/output device (*i.e., the user computer/laptop 1150/1180 comprising a modem, keyboard, screen, mouse, speakers, etc.*) (**Selgas, Figs. 20-21**).
25. As to claim 22, **Selgas** teaches the computer system of claim 20, further comprising a network adaptor (*i.e., comprising an Ethernet card*) to interface with a network device during establishment of the network connection (**Selgas, col. 15, lines 35-40**).
26. As to claims 23-24, **Selgas** teaches the computer system of claim 22, wherein the network device is a modem (*one of the plurality of modems of the ISP 102*) (**Selgas, Figs. 20-21**).
27. Claim 25 recites a corresponding computer system comprising means for performing the method claim 1; therefore, it is rejected under the same rationale.
28. Claim 26 recites a computer-readable medium having computer-executable instructions contained therein for performing the method claim 1; therefore, it is rejected under the same rationale.

29. As to claims 27-31, **Selgas** teaches the method of claim 1, wherein accessing the configuration history information includes accessing the configuration information, stored on the client node, related to a last network connection speed, dialed number, Internet protocol, performance associated with the previous connection (*collecting and storing the network services information, i.e., configuration history information, in various databases 204-210 such as the network services database 206 on the user node 110a, 110b, wherein the network services database 206 contains access information for each dial-in number for a particular ISP such as one or more PAP IDs/passwords, default routing information and configuration information to configure the user's modem, such as data compression information and speed*) (**Selgas, Fig. 2, col. 9, lines 39-62 and col. 17, lines 40-65**).

30. As to claim 32, **Selgas** teaches the method of claim 1, wherein accessing the policy information includes accessing a desired network configuration performance rule that relates to at least one of failure rate information, abnormal disconnect rate, connect failure rates, retain rates, busy rates, or signal-to-noise rate of the previous network connection (*accessing the Client and Server Histogram data*) (**Selgas, col. 21, lines 4-61 and col. 23, lines 1-44**).

31. As to claim 33, **Selgas** teaches the method of claim 1, further comprising accessing the policy information from storage on the client node (*i.e., the network services database 206*) (**Selgas, col. 10, lines 4-11**).

32. As to claim 34, **Selgas** teaches the method of claim 1, wherein modifying the at least one network configuration parameter includes modifying the at least one network configuration parameter used to establish the network connection between the client node and the host node so that the network connection is configured to operate as the desired network connection (**Selgas, col. 8, lines 32-54 and col. 21, line 4 – col. 22, line 64**).

33. As to claim 35, **Selgas** teaches the method of claim 3, wherein modifying the at least one modem configuration parameter includes establishing a second network connection with a second modem connection (*after receiving the updated ISP-specific access information, the client dispatch application 200 may disconnect the user 110 from the current ISP 102 and automatically dial and reconnect the user 110 to the desired ISP 102 associated with the updated ISP-specific access information, i.e., associated with the modified plurality network configuration parameter*) (**Selgas, col. 8, lines 9-13 and col. 20, lines 47-50**).

34. As to claim 36, **Selgas** teaches the method of claim 1, wherein accessing the policy information includes accessing the policy information indicating that cost considerations are to be prioritized (*i.e., for low cost operation*) in determining whether the at least one parameter of the previous and no longer active network connection fails to satisfy the desired network connection performance rule (**Selgas, col. 8, lines 32-54 and col. 20, line 51 – col. 21, line 3**).

35. As to claim 37, **Selgas** teaches the method of claim 1, wherein accessing the policy information includes accessing the policy information indicating that performance considerations are to be prioritized (*i.e., for reliability and available operation*) in determining whether the at least one parameter of the previous and no longer active network connection fails to satisfy the desired network connection performance rule (**Selgas, col. 8, lines 32-43, col. 15, lines 25-29 and col. 21, line 4 – col. 22, line 64**).

36. As to claim 38, **Selgas** teaches the method of claim 1, wherein accessing the policy information includes accessing the policy information indicating that cost and performance considerations are to be used in a predetermined weighting (*providing control mechanisms to ensure that a user 110 receives the appropriate level of service for which they are subscribed such as “the lowest cost service”, “the highest reliability service”, “the most available service”, or combinations thereof*) in determining whether the at least one parameter of the previous and no longer active network connection fails to satisfy the desired network connection performance rule (**Selgas, col. 8, lines 32-43, col. 15, lines 25-29 and col. 21, line 4 – col. 22, line 64**).

37. Claims 39-57 recite method claims that contain features similar to the above-recited features of claims 1, 3-9, 17, 19, 28-32, 34 and 36-38; therefore, it is rejected under the same rationale.

***Response to Arguments***

38. In the Remarks, Applicants argued in substance that

(A) Prior Art (**Selgas**) fails to describe or suggest at least “*using the configuration history information along with the policy information to determine whether at least one of the parameters of the previous and no longer active network connection fails to satisfy the desired network connection performance rule; and if it is determined that the at least one of the parameters of the previous and no longer active network connection fails to satisfy the desired network connection performance rule, modifying the at least one network configuration parameter used to establish the network connection between the client node and the host node*”, as recited in claim 1.

As to point (A), **Selgas** teaches collecting and storing various user and network services information in several databases 204-210 on the user node 110, wherein the network services database 206 contains access information for each dial-in number for a particular ISP such as one or more PAP IDs/passwords, default routing information (i.e., *gateway address information*), default directory information (*including domain name server information*), sub-protocols for the PPP, and configuration information for the hardware to configure the user’s modem, such as data compression information and speed (i.e., collecting and storing configuration history information in the network services database 206) (**Selgas, Fig. 2, col. 9, lines 39-62**). In addition, the network services database 206 includes information relating to the type of service requested by

the user 110, such as the "lowest cost service", the "highest reliability service", the "most available service", or combination thereof, plan pricing and descriptions, and includes information identifying one or more primary processes to be performed by the client dispatch application 200 (i.e., collecting and storing policy information in the network services database 206) (**Selgas, col. 10, lines 4-11**).

**Selgas** also teaches the access server 106 reviews the header information (*including the network services database 206 as described above containing configuration history information along with the policy information*) to determine what, if any, updates are required to be made to the user client's dispatch application, databases, or network access devices operating system, wherein such updates may include new dial-in locations, new identification information such as PAP IDs, network authentication passwords such as PAP passwords, other IDs/passwords, change of phone numbers, area codes, low cost ISP, dial-in location priority sequence numbers, or any combination thereof, or any other information relating to gaining access to the ISP 102 (i.e., using the configuration history information along with the policy information to determine whether at least one of the parameters of the previous and no longer active network connection fails to satisfy the desired network connection performance rule). If any updates are required, these are supplied by the access service 106 and any necessary updates will take place transparent to the user 110 (i.e., and if it is, modifying the at least one network configuration parameter used to establish the network connection between the client node and the host node) (**Selgas, col. 17, lines 50-65**).

***Conclusion***

39. Applicant's arguments as well as request for reconsideration filed on 03/09/2007 have been fully considered but they are not deemed to be persuasive.

40. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

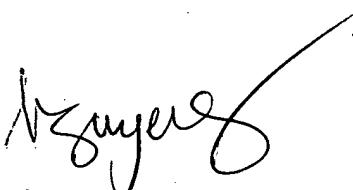
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang N. Nguyen whose telephone number is (571) 272-3886.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's SPE, Rupal Dharia, can be reached at (571) 272-3880. The fax phone number for the organization is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Quang N. Nguyen  
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